

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DELIA G. MORENO,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-15-141-RAW-KEW
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security)	
Administration,)	
)	
Defendant.)	

ORDER REMANDING CASE FOR FURTHER PROCEEDINGS

On August 11, 2016, Magistrate Judge West entered a Report and Recommendation in the above-referenced case, recommending that this court reverse the Commissioner’s decision upholding on appeal the findings of the Administrative Law Judge (“ALJ”), denying benefits to plaintiff. The recommended remand was based upon the ALJ reassessing the applicability of Listing 1.04(A) involving the spine.


Defendant filed an objection, which has been duly considered. Defendant’s argument is essentially to invoke the harmless error doctrine, in which the court can “confidently say that no reasonable factfinder, following the correct analysis, could have resolved the factual matter in any other way.” *Allen v. Barnhart*, 357 F.3d 1140, 1145 (10th Cir.2004).

Here, the Magistrate Judge expressly found that “[c]learly, the cervical spine could meet the requirements of Listing 1.04 from this evidence in the record.” (#15 at 7)(emphasis added). The court concurs with this finding.

Upon full consideration of the entire record and the issues herein, this court finds that the Magistrate Judge's findings are supported by substantial evidence and the prevailing legal authority. Accordingly, the Report and Recommendation of the United States Magistrate Judge is hereby AFFIRMED and ADOPTED as this court's Findings and Order. The decision of the Secretary is reversed and this case is remanded to Defendant pursuant to the fourth sentence of 42 U.S.C. §405(g) for further administrative proceedings.

ORDERED THIS 28th DAY OF SEPTEMBER, 2016.

Dated this 28th day of September, 2016.


Ronald A. White
United States District Judge
Eastern District of Oklahoma